

**R162-2f-205. Registration of Entity.**

(1) A principal broker may not conduct business through an entity, including a branch office, dba, or separate property management company, without first registering the entity with the division. The division may not bring an action for enforcement of this subsection after the expiration of four years following the occurrence of the violation.

(2) Exemptions. The following locations may be used to conduct real estate business without being registered as branch offices:

- (a) a model home;
- (b) a project sales office; and
- (c) a facility established for twelve months or less as a temporary site for marketing activity, such as an exhibit booth.

(3) To register an entity with the division, a principal broker shall:

- (a) evidence that the name of the entity is registered with the Division of Corporations;
- (b) certify that the entity is affiliated with a principal broker who:
  - (i) is authorized to use the entity name; and

(ii) will actively supervise the activities of each ~~[all]~~ sales agent[s], associate broker[s], branch broker[s], and unlicensed staff member;

(c) if registering a branch office, identify the branch broker who will actively supervise each ~~[all]~~ licensee[s] and unlicensed staff working from the branch office;

(d) submit an application that includes:

- (i) the physical address of the entity;
- (ii) if the entity is a branch office, the name and license number of the branch broker;
- (iii) the names of associate brokers and sales agents assigned to the entity; and
- (iv) the location and account number of any real estate and property management trust account(s) in which funds received at the registered location will be deposited;

(e) inform the division of:

- (i) the location and account number of any operating account(s) used by the registered entity; and
  - (ii) the location where brokerage records will be kept; and
- (f) pay a nonrefundable application fee.

(4) Restrictions.

(a)(i) The division shall not register an entity proposing to use a business name that:

(A) is likely to mislead the public into thinking that the entity is not a real estate brokerage or property management company;

(B) closely resembles the name of another registered entity; or

(C) the division determines might otherwise be confusing or misleading to the public.

(ii) Approval by the division of an entity's business name does not ensure or grant to the entity a legal right to use or operate under that name.

(b) A branch office shall operate under the same business name as the principal brokerage.

(c) An entity may not designate a post office box as its business address, but may designate a post office box as a mailing address.

(d) Each ~~[All]~~ trust account[s] and operating account[s] used by a registered entity shall be maintained in a bank or credit union located in the state of Utah.

(5) Registration not transferable.

(a) A registered entity shall not transfer the registration to any other person.

(b) A registered entity shall not allow an unlicensed person to use the entity's registration to perform work for which licensure is required.

(c) If a change in corporate structure of a registered entity creates a separate and unique legal entity, that entity shall obtain a unique registration, and shall not operate under an existing registration.

(d) The dissolution of a corporation, partnership, limited liability company, association, or other entity registered with the division terminates the registration.

**R162-2f-207. Reporting a Change of Information.**

(1) Individual notification requirements.

(a) An individual licensed as a sales agent, associate broker, or principal broker shall report the following to the division:

- (i) change in licensee's name; and
- (ii) change in licensee's business, home, e-mail, or mailing address.

(b) In addition to complying with ~~this~~ Subsection (1)(a):

(i) an individual licensed as a sales agent or associate broker shall report to the division a change in affiliation with a principal broker; and

(ii) an individual licensed as a principal broker shall report to the division:

(A) termination of a sales agent, associate broker, or branch broker, if the change is not reported pursuant to ~~this~~ Subsection (1)(b)(i);

(B) change in assignment of branch broker; and

(C) termination of the principal broker's affiliation with an entity.

(2) Entity notification requirements. A registered entity shall report the following to the division:

- (a) change in entity's name;
- (b) change in entity's affiliation with a principal broker;
- (c) change in corporate structure;
- (d) dissolution of corporation; and
- (e) change of location where brokerage records are kept.

(3) Notification procedures.

- (a) Name. To report a change in name, a person shall submit to the division a paper change form and:
  - (i) if the person is an individual, attach to it official documentation such as a:
    - (A) marriage certificate;
    - (B) divorce decree;
    - (C) court order; or
    - (D) driver license; and
  - (ii) if the person is an entity:
    - (A) obtain prior approval from the division of the new entity name; and
    - (B) attach to the change form proof that the new name as approved by the division pursuant to ~~[this]~~ Subsection (3)(a)(ii)(A) is registered with, and approved by, the Division of Corporations.
- (b) Address. To report a change in address, a person shall enter the change into RELMS.
- (c) Affiliation.
  - (i) To terminate an affiliation between an individual and a principal broker, a person shall submit a change form through RELMS to inactivate or transfer the individual's license; and
    - (A)(I) obtain the electronic affirmation of the other party to the terminated affiliation; or
    - (II) comply with ~~[this]~~ Subsection (4); and
    - (B) if a sales agent, associate broker, or branch broker simultaneously establishes an affiliation with a new principal broker, obtain the electronic affirmation of the new principal broker on a change form.
  - (ii) To terminate an affiliation between a principal broker and an entity:
    - (A) the principal broker shall submit a paper change form to the division to inactivate or transfer the principal broker's license; and
    - (B) if the entity does not simultaneously affiliate with a new principal broker, the entity shall:
      - (I) cease operations;
      - (II) submit to the division a paper company/branch change form to inactivate the entity registration;
      - (III) submit change forms through RELMS to inactivate the license of any licensee affiliated with the entity;
      - (IV) advise the division as to the location where records will be stored;
      - (V) notify each listing and management client that the entity is no longer in business and that the client may enter into a new listing or management agreement with a different brokerage;
      - (VI) notify each party and cooperating broker to any existing contracts; and
      - (VII) retain money held in trust under the control of a signer on the trust account, or an administrator or executor, until each party ~~[all parties]~~ to every ~~[each]~~ transaction agree in writing to the disposition or until a court of competent jurisdiction issues an order relative to the disposition.
  - (iii) Branch broker. To change an assignment of branch broker, a principal broker shall submit a paper change form to the division.
- (d) Corporate structure.
  - (i) To report a change in corporate structure of a registered entity, the affiliated principal broker shall:
    - (A) if the change does not involve a new business license, or a new registration with the Utah Division of Corporations and Commercial Code, submit a letter to the division, fully explaining the change; and
    - (B) if the change involves a new business license or a new registration with the Utah Division of Corporations and Commercial Code for a purpose other than a company name change, obtain a new registration.
  - (ii) To report the dissolution of an entity registered with the division, a person shall comply with ~~[this]~~ Subsection (3)(c)(ii)(B).
- (e) Brokerage records. To report a change in the location where brokerage records are kept, the principal broker of the registered entity shall submit to the division a letter on brokerage letterhead.

(4) Unavailability of individual. If an individual is unavailable to sign or electronically affirm a change form, the person responsible to report the change may do so by:

- (a) sending a letter by certified mail to the last known address of the individual to notify that individual of the change~~;~~ and, as applicable:
  - ~~[(i) as applicable:]~~
  - ~~(i)~~~~(A)~~ entering the certified mail reference number into the appropriate field on the electronic change form; or
  - ~~(ii)~~~~(B)~~ providing to the division a copy of the certified mail receipt; or
- (b) sending an email to notify the individual.

The division may not bring an action for enforcement of this subsection after the expiration of four years following the occurrence of the violation.

(5) The termination of affiliation by sending an email is effective 10 days after the date that the email was sent.

(6) Fees. The division may require a notification submitted pursuant to this ~~sub~~section to be accompanied by a nonrefundable change fee.

(7) Deadlines.

(a) A change in affiliation shall be reported to the division before the change is made.

(b) A change in branch manager shall be reported to the division at the time the change is made.

(c) Any other change shall be reported to the division within ten business days of the change taking effect.

(d) As to a change that requires submission of a paper form or document, if the deadline specified in this Section R162-2f-207 falls on a day when the division is closed for business, the deadline shall be extended to the next business day.

(8) Effective date. A change reported in compliance with this Section R162-2f-207 becomes effective with the division the day on which the properly executed change form is received by the division.

#### **R162-2f-401a. Affirmative Duties Required of ~~All~~ Licensed Individuals.**

An individual licensee shall:

(1) uphold the following fiduciary duties in the course of representing a principal:

(a) loyalty, which obligates the agent to place the best interests of the principal above any ~~all~~ other interest[s], including the agent's own;

(b) obedience, which obligates the agent to obey any ~~all~~ lawful instructions from the principal;

(c) full disclosure, which obligates the agent to inform the principal of any material fact the agent learns about:

(i) the other party; or

(ii) the transaction;

(d) confidentiality, which prohibits the agent from disclosing, without permission, any information given to the agent by the principal that would likely weaken the principal's bargaining position if it were known, but excepting any known material fact concerning:

(i) a defect in the property; or

(ii) the client's ability to perform on the contract;

(e) reasonable care and diligence;

(f) holding safe and accounting for any ~~all~~ money or property entrusted to the agent; and

(g) any additional duties created by the agency agreement;

(2) for the purpose of defining the scope of the individual's agency, execute a written agency agreement between the individual and the individual's principal, including:

(a) seller(s) the individual represents;

(b) buyer(s) the individual represents;

(c) buyer(s) and seller(s) the individual represents as a limited agent in the same transaction pursuant to ~~this~~ Subsection

(4);

(d) the owner of a property for which the individual will provide property management services; and

(e) a tenant whom the individual represents;

(3) in order to represent both principals in a transaction as a limited agent, obtain prior informed consent by:

(a) clearly explaining in writing to both parties:

(i) that each is entitled to be represented by a separate agent;

(ii) the type(s) of information that will be held confidential;

(iii) the type(s) of information that will be disclosed; and

(iv) the circumstances under which the withholding of information would constitute a material misrepresentation regarding the property or regarding the abilities of the parties to fulfill their obligations;

(b) obtaining a written acknowledgment from each party affirming that the party waives the right to:

(i) undivided loyalty;

(ii) absolute confidentiality; and

(iii) full disclosure from the licensee; and

(c) obtaining a written acknowledgment from each party affirming that the party understands that the licensee will act in a neutral capacity to advance the interests of each party;

(4) when acting under a limited agency agreement:

(a) act as a neutral third party; and

(b) uphold the following fiduciary duties to both parties:

(i) obedience, which obligates the limited agent to obey any ~~all~~ lawful instructions from the parties, consistent with the agent's duty of neutrality;

(ii) reasonable care and diligence;

(iii) holding safe any ~~all~~ money or property entrusted to the limited agent; and

(iv) any additional duties created by the agency agreement;

(5) when making an offer or solicitation to buy, sell, lease or rent real property as a principal, either directly or indirectly, or as an agent for a client, a licensee shall disclose in the initial contact with the other party the fact that the licensee holds a license with the division, whether the license status is active or inactive;

(6) prior to the execution of a binding purchase or lease agreement, disclose in writing to clients, agents for other parties, and unrepresented parties:

- (a) the licensee's position as a principal in any transaction where the licensee operates either directly or indirectly to buy, sell, lease, or rent real property;
- (b) the fact that the licensee holds a license with the division, whether the license status is active or inactive, in any circumstance where the licensee is a principal in an agreement to buy, sell, lease, or rent real property;
- (c) the licensee's agency relationship(s); and
- (d)(i) the existence or possible existence of a due-on-sale clause in an underlying encumbrance on real property; and
- (ii) the potential consequences of selling or purchasing a property without obtaining the authorization of the holder of an underlying encumbrance;
- (7) in order to offer any property for sale or lease, make reasonable efforts to verify the accuracy and content of the information and data to be used in the marketing of the property;
- (8) in order to offer a residential property for sale, disclose the source on which the licensee relies for any square footage data that will be used in the marketing of the property:
- (a) in the written agreement, executed with the seller, through which the licensee acquires the right to offer the property for sale; and
- (b) in a written disclosure provided to the buyer, at the licensee's direction, at or before the deadline for the seller's disclosure per the contract for sale;
- (9) upon initial contact with another agent in a transaction, disclose the agency relationship between the licensee and the client;
- (10) when executing a binding agreement in a sales transaction, confirm the prior agency disclosure:
  - (a) in the currently approved Real Estate Purchase Contract; or
  - (b) in a separate provision with substantially similar language incorporated in or attached to the binding agreement;
- (11) when executing a lease or rental agreement, confirm the prior agency disclosure by:
  - (a) incorporating it into the agreement; or
  - (b) attaching it as a separate document;
- (12) if the licensee desires to act as a sub-agent for the purpose of showing property owned by a seller who is under contract with another brokerage, prior to showing the seller's property:
  - (a) notify the listing brokerage that sub-agency is requested; and
  - (b) enter into a written agreement with the listing brokerage with which the seller has contracted:
    - (i) consenting to the sub-agency; and
    - (ii) defining the scope of the agency;
  - (c) obtain from the listing brokerage any ~~[all]~~ available information about the property; and
  - (d) uphold the same fiduciary duties outlined in ~~[this]~~ Subsection (1);
- (13) provide copies of a lease or purchase agreement, properly signed by each party, ~~[all parties]~~, to the party for whom the licensee acts as an agent;
- (14)(a) in identifying the seller's brokerage in paragraph 5 of the approved Real Estate Purchase Contract, use:
  - (i) the principal broker's individual name; or
  - (ii) the principal broker's brokerage name; and
- (b) personally fulfill the licensee's agency relationship with the client, notwithstanding the information used to complete paragraph 5;
- (15) timely inform the licensee's principal broker or branch broker of real estate transactions in which:
  - (a) the licensee is involved as agent or principal;
  - (b) the licensee has received funds on behalf of the principal broker; or
  - (c) an offer has been written;
- (16)(a) disclose in writing to each party, ~~[all parties]~~, to a transaction any compensation in addition to any real estate commission that will be received in connection with a real estate transaction; and
- (b) ensure that any such compensation is paid to the licensee's principal broker;
- (17)(a) in negotiating and closing a transaction, a licensee may fill out those legal forms as provided for in Section 61-2f-306;
- (18) use an approved addendum form to make a counteroffer or any other modification to a contract;
- (19) in order to sign or initial a document on behalf of a principal in a sales transaction:
  - (a) obtain prior written authorization in the form of a power of attorney duly executed by the principal;
  - (b) retain in the file for the transaction a copy of said power of attorney;
  - (c) attach said power of attorney to any document signed or initialed by the individual on behalf of the principal;
  - (d) sign as follows: "(Principal's Name) by (Licensee's Name), Attorney-in-Fact;" and
  - (e) initial as follows: "(Principal's Initials) by (Licensee's Name), Attorney-in-Fact for (Principal's Name);"
- (20) in order to sign or initial a document on behalf of a principal in a property management transaction:
  - (a) obtain prior written authorization executed by the principal which specifically identifies the actions that are authorized to be taken on behalf of the principal;
  - (b) retain in the file for the transaction a copy of the written authorization;
  - (c) sign as follows: "by (Licensee's Name), on behalf of Owner;" and
  - (d) initial as follows: "by (Licensee's initials), on behalf of Owner;"

(21) if employing an unlicensed individual to provide assistance in connection with real estate transactions, adhere to the provisions of Section R162-2f-401g;

(22) strictly adhere to advertising restrictions as outlined in Section R162-2f-401h;

(23) as to a guaranteed sales agreement, provide full disclosure regarding the guarantee by executing a written contract that contains:

- (a) the conditions and other terms under which the property is guaranteed to be sold or purchased;
- (b) the charges or other costs for the service or plan;
- (c) the price for which the property will be sold or purchased; and
- (d) the approximate net proceeds the seller may reasonably expect to receive;

(24) immediately deliver money received in a real estate transaction to the principal broker for deposit; and

(25) as contemplated by Subsection 61-2f-401(20), when notified by the division that information or documents are required for investigation purposes, respond with the required information or documents in full and within ten business days. The division may not bring an action for enforcement of this subsection after the expiration of four years following the occurrence of the violation.

**R162-2f-401b. Prohibited Conduct As Applicable to ~~[All]~~ Licensed Individuals.**

~~(1)~~ An individual licensee may not:

~~(a)~~ ~~(1)~~ engage in any of the practices described in Section 61-2f-401 and the following sections, ~~[et seq.,]~~ whether acting as agent or on the licensee's own account, in a manner that:

- ~~(i)~~ ~~(a)~~ fails to conform with accepted standards of the real estate sales, leasing, or management industries;
- ~~(ii)~~ ~~(b)~~ could jeopardize the public health, safety, or welfare; or
- ~~(iii)~~ ~~(c)~~ violates any provision of Title 61, Chapter 2f ~~[et seq.,]~~ or the rules of this chapter;

~~(b)~~ ~~(2)~~ require parties to acknowledge receipt of a final copy of any document prepared by the licensee prior to all parties signing a contract evidencing agreement to the terms thereof;

~~(c)~~ ~~(3)~~ make a misrepresentation to the division:

- ~~(i)~~ ~~(a)~~ in an application for license renewal; or
- ~~(ii)~~ ~~(b)~~ in an investigation.

~~(d)~~ ~~(i)~~ ~~(4)~~ ~~(a)~~ propose, prepare, or cause to be prepared a document, agreement, settlement statement, or other device that the licensee knows or should know does not reflect the true terms of the transaction; or

- ~~(ii)~~ ~~(b)~~ knowingly participate in a transaction in which such a false device is used;
- ~~(e)~~ ~~(5)~~ participate in a transaction in which a buyer enters into an agreement that:

- ~~(i)~~ ~~(a)~~ is not disclosed to the lender; and
- ~~(ii)~~ ~~(b)~~ if disclosed, might have a material effect on the terms or the granting of the loan;

~~(f)~~ ~~(6)~~ use or propose the use of a double contract;

~~(g)~~ ~~(7)~~ place a sign on real property without the written consent of the property owner;

~~(h)~~ ~~(8)~~ take a net listing;

~~(j)~~ ~~(9)~~ sell listed properties other than through the listing broker;

~~(j)~~ ~~(10)~~ subject a principal to paying a double commission without the principal's informed consent;

~~(k)~~ ~~(11)~~ enter or attempt to enter into a concurrent agency representation when the licensee knows or should know that the principal has an existing agency representation agreement with another licensee;

~~(l)~~ ~~(12)~~ pay a finder's fee or give any valuable consideration to an unlicensed person or entity for referring a prospect, except that:

- ~~(i)~~ ~~(a)~~ a licensee may give a gift valued at \$250 or less to an individual in appreciation for an unsolicited referral of a prospect that results in a real estate transaction; and
- ~~(ii)~~ ~~(b)~~ as to a property management transaction, a licensee may compensate an unlicensed employee or previous or current tenant up to \$250 per lease for assistance in retaining an existing tenant or securing a new tenant;

~~(m)~~ ~~(13)~~ accept a referral fee from:

- ~~(i)~~ ~~(a)~~ a lender; or
- ~~(ii)~~ ~~(b)~~ a mortgage broker;

~~(n)~~ ~~(14)~~ act as a real estate agent or broker in the same transaction in which the licensee also acts as a:

- ~~(i)~~ ~~(a)~~ mortgage loan originator, associate lending manager, or principal lending manager;
- ~~(ii)~~ ~~(b)~~ appraiser or appraiser trainee;
- ~~(iii)~~ ~~(c)~~ escrow agent; or
- ~~(iv)~~ ~~(d)~~ provider of title services;

~~(o)~~ ~~(15)~~ act or attempt to act as a limited agent in any transaction in which:

- ~~(i)~~ ~~(a)~~ the licensee is a principal in the transaction; or
- ~~(ii)~~ ~~(b)~~ any entity in which the licensee is an officer, director, partner, member, manager, employee, or stockholder is a principal in the transaction;

- ~~(p)~~ ~~(16)~~ make a counteroffer by striking out, whiting out, substituting new language, or otherwise altering:

- ~~(i)~~ ~~(a)~~ the boilerplate provisions of the Real Estate Purchase Contract; or
- ~~(ii)~~ ~~(b)~~ language that has been inserted to complete the blanks of the Real Estate Purchase Contract;

~~(q)~~ ~~(17)~~ advertise or offer to sell or lease property without the written consent of:

(i)~~(a)~~ the owner(s) of the property; and  
(ii)~~(b)~~ if the property is currently listed, the listing broker;  
(r)~~(48)~~ advertise or offer to sell or lease property at a lower price than that listed without the written consent of the seller or lessor;

(s)~~(49)~~ represent on any form or contract that the individual is holding client funds without actually receiving funds and securing them pursuant to Subsection R162-2f-401a(24);

(t)~~(20)~~ when acting as a limited agent, disclose any information given to the agent by either principal that would likely weaken that party's bargaining position if it were known, unless the licensee has permission from the principal to disclose the information;

(u)~~(21)~~ disclose, or make any use of, a short sale demand letter outside of the purchase transaction for which it is issued;

(v)~~(22)~~ in a short sale, have the seller sign a document allowing the licensee to lien the property; or

(w)~~(23)~~ charge any fee that represents the difference between:

(i)~~(a)~~ the total concessions authorized by a seller and the actual amount of the buyer's closing costs; or

(ii)~~(b)~~ in a short sale, the sale price approved by the lender and the total amount required to clear encumbrances on title and close the transaction.

(2) The division may not bring an action for enforcement of either Subsection (1)(g) or Subsection (1)(q) after the expiration of four years following the occurrence of the violation.

#### **R162-2f-401h. Requirements and Restrictions in Advertising.**

(1) Except as provided for in subsections (2) and (3), a licensee shall not advertise or permit any person employed by or affiliated with the licensee to advertise real estate services or property in any medium without clearly and conspicuously identifying in the advertisement the name of the brokerage with which the licensee is affiliated. The division may not bring an action for enforcement of this subsection after the expiration of four years following the occurrence of the violation.

(2) When it is not reasonable for a licensee to identify the name of the brokerage in an electronic advertisement, the licensee shall ensure the electronic advertisement directly links to a display that clearly and conspicuously identifies the name of the brokerage.

(3) A licensee is not required to identify the name of the brokerage with which the licensee is affiliated if:

(a) the licensee advertises a property not currently listed with the brokerage with which the licensee is affiliated;

(b) the licensee has an ownership interest in the property; and

(c) the advertisement identifies the name of the individual licensee as "owner-agent" or "owner-broker."

(4) The name of the brokerage identified by a licensee in an advertisement shall be the name of the brokerage as shown on division records.

(5) A team, group, or other marketing entity which includes one or more licensees shall be subject to the same requirements and restrictions with regard to advertising as is an individual licensee.

(6)(a) If a licensee advertises a guaranteed sales plan, the advertisement shall include, in a clear and conspicuous manner:

(i) a statement that costs and conditions may apply; and

(ii) information about how to contact the licensee offering the guarantee so as to obtain the disclosures required under Subsection R162-2f-401a(23).

(b) Any radio or television advertisement of a guaranteed sales plan shall include a conspicuous statement advising if any conditions and limitations apply.

#### **R162-2f-401j. Standards for Property Management.**

(1) Property management performed by a real estate brokerage, or by licensees or unlicensed assistants affiliated with the brokerage, shall be done under the name of the brokerage as registered with the division unless the principal broker holds a dual broker license and obtains a separate registration pursuant to Section R162-2f-205 for a separate business name.

(2) In addition to fulfilling each duty ~~[all duties]~~ related to supervision per Section 61-2f-401(14), the principal broker of a registered entity, and the branch broker of a registered branch, shall implement training to ensure that each sales agent, associate broker, and unlicensed employee who is affiliated with the licensee has the knowledge and skills necessary to perform assigned property management tasks within the boundaries of these rules, including ~~[this]~~ Subsection R162-2f-401j(3).

(3) An unlicensed individual employed by a real estate or property management company may perform the following services under the supervision of the principal broker without holding an active real estate license:

(a) providing a prospective tenant with access to a rental unit;

(b) providing secretarial, bookkeeping, maintenance, or rent collection services;

(c) quoting rent and lease terms as established or approved by the principal broker;

(d) completing pre-printed lease or rental agreements, except as to terms that may be determined through negotiation of the principals;

(e) serving or receiving legal notices;

(f) addressing tenant or neighbor complaints; and

(g) inspecting units.

(4) Within 30 days of the termination of a contract with a property owner for property management services, the principal broker shall deliver any ~~[all]~~ trust money to the property owner, the property owner's designated agent, or other party as designated under the contract with the property owner. If the principal broker delivers the trust money but fails to deliver it within the 30-day

deadline, the division may not bring an action for enforcement of this subsection after the expiration of four years following the occurrence of the violation.